

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID AND TSILIA NIKCHEMNY,

Plaintiffs,

-against-

COLONY INSURANCE COMPANY,

Defendant.

Civil Action No.: 16-CV-_____

Removed from:

The Supreme Court of the State of New York, County of Kings Index No.: 500233/2016

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Defendant, COLONY INSURANCE COMPANY (“Colony”), by and through its undersigned counsel, STEWART BERNSTIEL REBAR & SMITH, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby respectfully submits this Notice of Removal of this civil action from the Supreme Court of New York, County of Kings, to the United States District Court for the Eastern District of New York. Colony, in accordance with the Rules of the United States District Courts and the rules of the Supreme Court of the State of New York, and in support of its Notice of Removal, states as follows:

STATEMENT OF THE CASE

1. On or about January 7, 2016, Plaintiffs filed a Summons and Complaint commencing an action in the Supreme Court of the State of New York, County of Kings captioned “David and Tsilia Nikchemny v. Colony Ins, Co.,” bearing Index Number 500233/2016 (the “State Court Action”). A copy of the Summons and Complaint filed in the Supreme Court of the State of New York, County of Kings is attached hereto as Exhibit “A.”

2. Defendant Colony was served with the Summons and Complaint on January 15, 2016. A copy of the Summons and Complaint served upon Colony is attached hereto as Exhibit "B."

3. Plaintiffs' Complaint alleges that Colony issued insurance policy number MP3904176 to the Plaintiffs. It further alleges that Plaintiffs property located at 182 Girard Street, Brooklyn, New York 11235, sustained damage on or about October 29, 2012. *See Exhibit A at ¶¶ 7-11.*

4. The Complaint also asserts that Plaintiffs provided information to Colony and have demanded full payment of the claim, for which Colony has "wrongfully denied coverage" "refused to make full payment," and that Colony's "failure to pay the full and complete claim or accept full coverage is a breach of contract." *Id.* at ¶¶ 19-24.

5. Plaintiffs' Complaint seeks judgment against Colony "for breach of contract, in the amount excess of \$100,000.00." *Id.* at p. 7.

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)

6. This Court has original jurisdiction over the instant action pursuant to 28 U.S.C. § 1332(a), because this matter is between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

7. Plaintiffs "are Kings County residents at the address 182 Girard St., Brooklyn, New York 11235." *See Exhibit A at ¶ 15.*

8. Defendant Colony is a citizen of the Commonwealth of Virginia under 28 U.S.C. § 1332(c)(1), because Colony is a business corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business located at 8720 Stony Point

Parkway, Suite 300, Richmond, Virginia 23235. Accordingly, there exists complete diversity of citizenship between the parties.

9. Plaintiffs' Complaint requests judgment "for breach of contract, in the amount excess of \$100,000." *See Exhibit A at p. 7.* Pursuant to 28 U.S.C. § 1446(c)(2), the sum demanded by Plaintiffs in their Complaint is deemed to be the amount in controversy. Accordingly, more than \$75,000.00, exclusive of interest and costs, is at issue in this action.

THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

10. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders which have been served upon Defendant Colony are being filed with this Notice of Removal.

11. This Notice of Removal has been filed pursuant to 28 U.S.C. §§ 1441(a), as the territory assigned to the United States District Court for the Eastern District of New York by 28 U.S.C. § 112(c), embraces the geographic location of the Supreme Court of the State of New York, County of Kings where the Summons and Complaint were originally filed.

12. Pursuant to 28 U.S.C. §1446(b), this Notice of Removal is timely filed within the thirty (30) day period proscribed for removal to federal court.

13. In accordance with the requirements set forth in 28 U.S.C. §1441(d), promptly after filing the Notice of Removal in this Court, a copy of this Notice of Removal will be served upon counsel for all parties and filed with the Supreme Court of the State of New York, County of Kings. Attached hereto as Exhibit "C" is a copy of the notice that will be filed with the Supreme Court of the State of New York, County of Kings promptly after the filing of this Notice of Removal.

CONCLUSION

Based upon the foregoing, the requirements of 28 U.S.C. §§ 1332, 1441, and 1446 have been satisfied and the within matter is properly removable. By this Notice of Removal, Defendant Colony Insurance Company, does not waive any objection it may have to service of process, jurisdiction or venue, or any other defenses or objections it may have to this action. Defendant, Colony Insurance Company, intends no admission of fact, law, or liability by this Notice, and expressly reserves all defenses, motions, and/or pleas, as well as the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendant, Colony Insurance Company, hereby respectfully requests that this Court accept and take jurisdiction of this action.

Dated: February 10, 2016

Respectfully submitted,
STEWART BERNSTIEL REBAR & SMITH

By: /s/ Vincent Chirico
Vincent Chirico, Esq.
1271 Avenue of the Americas, Suite 4300
New York, New York 10020
P: (212) 858-9970
F: (212) 858-9971
E: VChirico@sbrslaw.com

*Attorneys for Defendant,
Colony Insurance Company*

TO: Mikhail Usher, Esq.
Usher Law Group P.C.
2711 Harway Avenue
Brooklyn, New York 11214
P: (347) 985-7800
F: (718) 865-8566
E: musheresq@gmail.com
*Attorney for Plaintiffs,
David & Tsilia Nikchemny*

CERTIFICATE OF SERVICE

I hereby certify that on **February 10, 2016**, the foregoing **Notice of Removal** was filed with the Clerk of the Court for the United States District Court for the Eastern District of New York and served in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District's Local Rules, and/or the Eastern District's Rules on Electronic Service upon the following parties and participants:

Mikhail Usher, Esq.
Usher Law Group P.C.
2711 Harway Avenue
Brooklyn, New York 11214
P: (347) 985-7800
F: (718) 865-8566
E: musheresq@gmail.com

*Attorney for Plaintiffs,
David & Tsilia Nikchemny*

By: /s/ Vincent Chirico
Vincent Chirico, Esq.
STEWART BERNSTIEL REBAR & SMITH
1271 Avenue of the Americas, Suite 4300
New York, New York 10020
P: (212) 858-9970
F: (212) 858-9971
E: VChirico@sbrslaw.com

*Attorneys for Defendant,
Colony Insurance Company*